

**IN THE SUPREME COURT
APPEAL FROM THE COURT OF APPEALS
JUDGES: MICHAEL R. SMOLENSKI, HELENE N. WHITE,
AND KRISTEN FRANK KELLY**

WEXFORD MEDICAL GROUP,

Petitioner-Appellant,

v

CITY OF CADILLAC,

Respondent-Appellee.

Supreme Court No. 127152

Court of Appeals No. 250197

MTT Docket No. 00-276304

BRIEF ON APPEAL-APPELLANT

ORAL ARGUMENT REQUESTED

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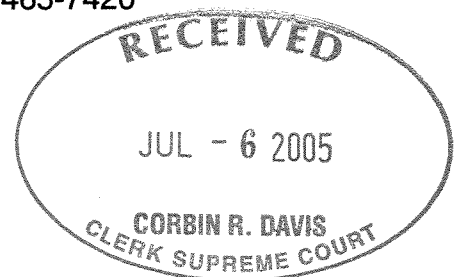


TABLE OF CONTENTS

INDEX OF AUTHORITIES.....	i
STATEMENT OF BASIS OF JURISDICTION.....	iv
STATEMENT OF QUESTIONS INVOLVED	v
STATEMENT OF FACTS	1
I. THE CHARITABLE MISSION OF WEXFORD AND ITS CREATORS.	1
II. WEXFORD’S CREATION.	2
III. WEXFORD’S CHARITABLE OPERATIONS AND THEIR FINANCIAL IMPACT.	4
IV. WEXFORD’S PUBLIC HEALTH SERVICES.	8
V. WEXFORD’S PROPERTY TAXATION AND EXEMPTION APPEAL.....	9
ARGUMENT	11
I. STANDARD OF REVIEW.	11
II. THIS COURT SHOULD FIND WEXFORD’S PROPERTY EXEMPT UNDER THE CHARITABLE INSTITUTION EXEMPTIONS.....	12
A. Introduction And Summary.....	12
B. Wexford Is Exempt Under The Clear Language Of GPTA Sections 7o(1) And 9(a).	14
C. Wexford Is Exempt Under This Court’s Prior Rulings.....	19
D. The Errors Of Law In The Decisions Below Require Reversal.	22
II. THIS COURT SHOULD FIND WEXFORD’S PROPERTY EXEMPT UNDER THE PUBLIC HEALTH EXEMPTION	28
CONCLUSION.....	33
RELIEF REQUESTED	33

INDEX OF AUTHORITIES

CASES	<u>Page</u>
<i>American Alternative Ins Co v Farmers Ins Exchange</i> , 470 Mich 28; 679 NW2d 306 (2004).....	15, 28
<i>Auditor General v RB Smith Memorial Hospital Ass'n</i> , 293 Mich 36; 291 NW 213 (1940)	12, passim
<i>Chauncey and Marion Deering McCormick Foundation v Wawatam Twp</i> , 196 Mich App 179; 492 NW2d 751 (1992).....	20
<i>Cruz v State Farm Mut Auto Ins Co</i> , 466 Mich 588; 648 NW2d 591 (2002).....	15
<i>Edsel & Eleanor Ford House v Village of Grosse Pointe Shores</i> , 134 Mich App 448; 350 NW2d 894 (1984).....	18, 20
<i>Gull Lake Bible Conference Ass'n v Ross Twp</i> , 351 Mich 269; 88 NW2d 264 (1958).....	15
<i>Huron Residential Services For Youth, Inc v Pittsfield Twp</i> , 152 Mich App 54; 393 NW2d 568 (1986).....	12, passim
<i>Kalamazoo Aviation History Museum v Kalamazoo</i> , 131 Mich App 709; 346 NW2d 862 (1984).....	18, 20
<i>Kalamazoo Nature Center v Cooper Twp</i> , 104 Mich App 657; 305 NW2d 283 (1981).....	18
<i>Lansing v Lansing Twp</i> , 356 Mich 641; 97 NW2d 804 (1959).....	15
<i>McLaren Reg'l Med Ctr v Owosso</i> , unpublished opinion per curiam of the Court of Appeals, decided August 24, 2004 (Docket No. 244386).....	18
<i>Michigan Sanitarium & Benevolent Ass'n v Battle Creek</i> , 138 Mich 676; 101 NW 855 (1904)	12, 19, 33
<i>Michigan Baptist Homes v Ann Arbor</i> , 396 Mich 660; 242 NW2d 749 (1976).....	15
<i>Michigan United Conservation Clubs v Lansing Twp</i> , 423 Mich 661, 671; 378 NW2d 737 (1985).....	15, 20
<i>OCLC Online Computer Library Center, Inc v Battle Creek</i> , 224 Mich App 608; 569 NW2d 676 (1997).....	15, 16

CASES

Page

<i>ProMed Healthcare v Kalamazoo</i> , 249 Mich App 490; 644 NW2d 47 (2002).....	14, 22-24
<i>Retirement Homes of the Detroit Annual Conference of the United Methodist Church, Inc v Sylvan Twp</i> , 416 Mich 340, 348-350; 330 NW2d 682 (1980).....	12, passim
<i>Rose Hill Center, Inc v Holly Twp</i> , 224 Mich App 28; 568 NW2d 332 (1997).....	31, 32

STATUTES

MCL 14.251	25
MCL 205.54q(1)(b)	24
MCL 205.94(w)	24
MCL 205.731	34
MCL 205.737	34
MCL 205.755	34
MCL 208.35(1)(c).....	24
MCL211.7o	1, passim
MCL 211.7r	1, passim
MCL 211.9(a).....	1, passim
MCL 450.2106(1)	25
MCL 450.2108(3).....	25
MCL 450.2301(3).....	25
MCL 450.2301(5).....	25
MCL 450.2866.....	25
26 USC 501(c)(3).....	3, 24, 25

STATUTES

Page

26 USC 4958	25
-------------------	----

OTHER SOURCES

Const 1963 art 4, § 51.....	11, 21
-----------------------------	--------

Const 1963 art 6, § 28.....	11
-----------------------------	----

American Heritage Dictionary, Second College Ed.....	31
--	----

STATEMENT OF BASIS OF JURISDICTION

On May 12, 2005, this Court entered its order granting the October 5, 2004 Application for Leave to Appeal which Petitioner-Appellant Wexford Medical Group had filed pursuant to MCR 7.302, in order to appeal the August 24, 2004 opinion of the Michigan Court of Appeals.

STATEMENT OF QUESTIONS INVOLVED

1. DO THE CHARITABLE INSTITUTION EXEMPTIONS OF GENERAL PROPERTY TAX ACT SECTIONS 7o AND 9(a) APPLY TO THE HEALTHCARE PROPERTY OF PETITIONER-APPELLANT WEXFORD MEDICAL GROUP (“WEXFORD”) WHERE (A) WEXFORD’S OPEN ACCESS POLICIES OFFERED AND PROVIDED HEALTHCARE TO THE PUBLIC ON A FIRST COME, FIRST SERVE BASIS AND INCLUDED CHARITY HEALTHCARE BASED ON FEDERAL POVERTY GUIDELINES, (B) DURING 1999-2001 ALONE, THESE POLICIES ALSO RESULTED IN A GIFT OF ALMOST \$2,000,000 IN BELOW COST HEALTHCARE FOR INDIGENT AND ELDERLY MEDICAID AND MEDICARE PATIENTS, AND (C) THE TRIBUNAL’S FINDINGS OF FACT INCLUDED THAT: (i) WEXFORD OPERATES IN THE FURTHERANCE OF THE MISSION OF ITS PARENTS, TRINITY HEALTH AND MUNSON HEALTHCARE; (ii) WEXFORD’S PARENTS “HAVE DONATED SIGNIFICANT AMOUNTS OF MONEY IN CHARITY HEALTH CARE SERVICES” IN “OPERATING IN FURTHERANCE OF” THEIR MISSIONS WHICH “INCLUDE PROVIDING ACCESS TO HEALTHCARE SERVICES IN UNDERSERVED AREAS OF NORTHERN MICHIGAN”; (iii) WEXFORD “EXTENDS CHARITY CARE AND INDIGENT SERVICES”; AND (iv) WEXFORD “OPERATES AT A LOSS, WITH ITS PARENTS SUBSIDIZING THE MEDICAL CARE PROVIDED AT ITS FACILITIES”?

Petitioner-Appellant says “Yes.”

Respondent-Appellee would say “No.”

The Court of Appeals and Tax Tribunal would say “No.”

2. DO THE CHARITABLE INSTITUTION EXEMPTIONS OF GENERAL PROPERTY TAX ACT SECTIONS 7o AND 9(a) APPLY TO WEXFORD’S HEALTHCARE PROPERTY BECAUSE WEXFORD LESSENS THE BURDENS OF GOVERNMENT?

Petitioner-Appellant says “Yes.”

Respondent-Appellee would say “No.”

The Court of Appeals and Tax Tribunal would say “No.”

3. WHEN THE LEGISLATURE HAS NOT DONE SO, MAY THE TAX TRIBUNAL OR JUDICIARY IMPOSE A THRESHOLD LEVEL OF CHARITABLE CARE UNDER THE CHARITABLE INSTITUTION EXEMPTIONS IN GENERAL PROPERTY TAX ACT SECTIONS 7o AND 9(a)?

Petitioner-Appellant says “No.”

Respondent-Appellee would say “Yes.”

The Court of Appeals and Tax Tribunal would say “Yes.”

4. DID THE DECISIONS BELOW ERR AS A MATTER OF LAW WHEN THEY RULED THAT THE CHARITABLE INSTITUTION EXEMPTIONS OF GENERAL PROPERTY TAX ACT SECTIONS 7o AND 9(a) DID NOT APPLY TO WEXFORD’S HEALTHCARE PROPERTY?

Petitioner-Appellant says “Yes.”

Respondent-Appellee would say “No.”

The Court of Appeals and Tax Tribunal would say “No.”

5. DOES THE PUBLIC HEALTH EXEMPTION OF GENERAL PROPERTY TAX ACT SECTION 7r APPLY TO WEXFORD’S HEALTHCARE FACILITY BECAUSE OF WEXFORD’S PROVIDING THE ENTIRE PUBLIC, REGARDLESS OF ABILITY TO PAY, PUBLIC HEALTH SERVICES, INCLUDING PREVENTATIVE MEDICINE, PUBLIC HEALTH EDUCATION, COMMUNICABLE DISEASE CONTROL, AND SOME SERVICES NOT OFFERED BY OTHER CITY OF CADILLAC HEALTHCARE PROVIDERS ?

Petitioner-Appellant says “Yes.”

Respondent-Appellee would say “No.”

The Court of Appeals and Tax Tribunal would say “No.”

6. WHEN THE LEGISLATURE HAS NOT DONE SO, MAY THE TAX TRIBUNAL OR JUDICIARY IMPOSE A THRESHOLD LEVEL OF PUBLIC HEALTH SERVICES

**UNDER THE PUBLIC HEALTH EXEMPTION IN GENERAL PROPERTY TAX ACT
SECTION 7r?**

Petitioner-Appellant says “No.”

Respondent-Appellee would say “Yes.”

The Court of Appeals and Tax Tribunal would say “Yes.”

7. DID THE DECISIONS BELOW ERR AS A MATTER OF LAW BY DENYING WEXFORD THE PUBLIC HEALTH EXEMPTION UNDER GENERAL PROPERTY TAX ACT SECTION 7r, WHEN WEXFORD PROVIDED THE ENTIRE PUBLIC, REGARDLESS OF ABILITY TO PAY, PUBLIC HEALTH SERVICES, INCLUDING PREVENTATIVE MEDICINE, PUBLIC HEALTH EDUCATION, COMMUNICABLE DISEASE CONTROL, AND SOME SERVICES NOT OFFERED BY OTHER CITY OF CADILLAC HEALTHCARE PROVIDERS?

Petitioner-Appellant says “Yes.”

Respondent-Appellee would say “No.”

The Court of Appeals and Tax Tribunal would say “No.”

STATEMENT OF FACTS

At issue is whether the real and personal property of Petitioner-Appellant Wexford Medical Group (“Wexford”), located in a rural federally designated health professional shortage area, is property tax-exempt under: the charitable institution exemptions of General Property Tax Act (“GPTA”) sections 7o and 9(a) (MCL 211.7o and 211.9(a)), and/or the public health exemption of section 7r, MCL 211.7r.

I. THE CHARITABLE MISSION OF WEXFORD AND ITS CREATORS.

Wexford’s history begins with its parents, Trinity Health (“Trinity”) and Munson Healthcare (“Munson”), both tax-exempt public charities under section 501(c)(3) of the Internal Revenue Code.¹ Their charitable missions include ensuring healthcare access, particularly for the poor and underserved, “including those in underserved areas of Northern Michigan.” Appendix (“App”) at 7a-8a, 52a-53a, and 113a-114a. As the Tribunal also found, “(i)n operating in furtherance of this mission, both organizations have donated significant amounts of money in charity health care services.” App at 7a. For example, in 2000 and 2001, Trinity and Munson collectively donated hundreds of millions of dollars to the ministry of the poor and underserved, of which over \$75,000,000 was just for the charity healthcare of patients who did not participate in Medicaid or Medicare. App at 111a-113a and 121a-122a.²

¹ Trinity was created in 2000 when Mercy Health Services and the Holy Cross Health System were combined. Trinity’s sponsor is the Catholic Health Ministries, which was formed by its two participating religious congregations, the Sisters of Mercy Regional Community of Detroit and the Congregation of the Sisters of the Holy Cross.

² The charity healthcare which exceeded \$75,000,000 included the following sums: \$38,060,000 and \$36,432,000 which are Trinity’s “Charity care **at cost**” for 2001 and 2000 respectively (App at 121a) and Munson’s 2001 fiscal year “Cost of Charity Care” of \$742,844 (App at 122a). The numbers in the charts at App 120a-121a are reported in thousands.

Trinity and Munson endowed Wexford with their same charitable mission. App at 50a, 61a-63a, 66a-67a, 70a, 100a-101a, 115a-117a, 125a-127a, and 133a-134a. As the Tax Tribunal found:

(Wexford) operates in furtherance of the mission of its parent corporations, Munson Healthcare and Trinity Health Care. Because of this, Petitioner (Wexford) extends charity care and indigent services, and has an open-acceptance policy for Medicare and Medicaid patients.

App at 8a.

II. WEXFORD'S CREATION.

Trinity and Munson created Wexford in 1999 to carry out their charitable healthcare mission in a federally designated health professional shortage area because significant financial distress caused a large healthcare provider to sell its four facilities in the northern Michigan communities of Cadillac, Manton, McBain, and Mesick. App at 7a-8a, 53a-54a, 57a-59a and 149a-150a. **Trinity and Munson thus enabled Wexford to purchase these four facilities, including the subject Cadillac site, and provide healthcare at them because they believed the closure of the facilities would have severe adverse health consequences for these rural, economically depressed communities, which are designated by the federal government as health professional shortage areas.** App at 7a-8a, 53a-54a, 57a-60a, and 104a.

As appropriate, Trinity and Munson established Wexford as a Michigan nonprofit corporation, exempt as charitable under section 501(c)(3) of the Internal Revenue Code of 1986, as amended. App at 7a, and 50a-51a. Consistent with Wexford's Restated Articles of Incorporation (the "Articles of Incorporation") and its Bylaws, Wexford operates in accordance with its parents' charitable healthcare mission. App at 7a-9a, 61a-62a, 70a, 100a-101a, 105a-108a, 115a-116a, 125a-127a and 133a-134a.

Illustratively, under its Articles of Incorporation Wexford's purposes include:

Article II

A. To promote the health and well-being of the community...by providing access to quality and affordable health care services to the communities it serves through one or more facilities operated by the Corporation or otherwise;

B. To conduct, or assist and support others (through transfers, gifts, loans, or other financial support and otherwise) who conduct non-health care activities that support, augment or are incidental to the Corporation's health care and health care related activities;

* * *

D. In furtherance of its purposes, but not by way of limitation:

* * *

(iv) To take all such actions and do all such things as may be necessary, convenient or desirable to accomplish the foregoing purposes within the restrictions and limitations of these Amended and Restated Articles of Incorporation, the Bylaws of the Corporation and applicable law, **provided that no part of the earnings of the Corporation shall inure to the benefit of any private individual** (except that reasonable compensation may be paid for services rendered to or for the Corporation affecting one or more of its purposes)....

Article V

The accomplishment of the purposes of the Corporation must be promoted and conducted in a manner consistent with the philosophies and missions of the Institute of the Sisters of Mercy of the Americas, the Sisters of Mercy Regional Community of Detroit and the Class B Member; the teachings of the Roman Catholic Church; the Ethical and Religious Directives for Catholic Health Care Services; and other medico-moral directives promulgated from time to time by the National Conference of Catholic Bishops.

App at 125a-127a [emphasis added].³

³ Pursuant to Wexford's open access policies, its physician employment agreements (sections 1.2.3, 1.2.9, and 1.2.11), require acceptance of all patients, regardless of ability to pay. App at 64a-65a, 96a, 100a-101a, 106a-108a, 152a, and 154a.

III. WEXFORD'S CHARITABLE OPERATIONS AND THEIR FINANCIAL IMPACT.

Wexford has fulfilled its and its parents' charitable mission of providing healthcare to the underserved. App at 7a-9a, 50a, 61a-69a, 70a, 100a-101a, 105a-108a, 115a-117a and 183a. Critically, Wexford's doors have been open to the public, regardless of ability to pay:

Q Okay. And if Wexford Medical Group's physicians are at full capacity, how does Wexford Medical Group determine which patients it sees?

A If they're at full capacity, they don't see any more patients. If there's room for one more patient, it's the next person in the door that you see.

Q So is it like a first-come-first-serve policy?

A That's correct.

Q Does it have anything to do with the patient's ability to pay?

A None whatsoever.

* * *

Q Could you explain how Wexford Medical Group serves the underprivileged?

A I think the Wexford Medical Group maintains an open door policy for patients regardless of the ability to pay or regardless of their insurance company, and **I think that's the main way they provide charity care is they take on all-comers. They don't limit their practice based on the patient's ability to pay.**

App at 70a and 115a-116a [emphasis added].

Wexford's charity care program makes free care available to those who are unable to pay for care. App at 66a-67a. Wexford uses the federal poverty guidelines to determine charity care eligibility. *Id.* Initially, when Wexford began operating in 1999, any patient whose income or earnings were at or below the federal poverty guidelines

could receive free healthcare if needed. *Id.* **In mid-2000, Wexford expanded its charity care policy to also offer financial assistance to patients whose income or earnings were two times the federal poverty level. *Id.***

During 2000, two individuals availed themselves of charity care at a value of \$129.13. App at 92a-93a and 183a. During 2001, eleven individuals used the charity care assistance at a value of \$2,229.09. *Id.* Even though Wexford encourages indigent patients to use its charity care program, some qualifying individuals choose not to participate in the program. App at 69a and 95a.

Besides these charity care policies, Wexford has made below cost healthcare available, without restriction, to any indigent or elderly Medicaid or Medicare patient in a federally designated health professional shortage area. App at 8a, 57a-59a, 77a, 115a-117a, and 149a-150a. Consequently, over half of Wexford's patients are Medicare and Medicaid. App at 57a.⁴ During 1999 through 2001 alone, Wexford's first come, first serve open access policies resulted in healthcare to the public whose cost was almost \$2 million above Wexford's receipts. App at 9a, 76a-77a, 115a-116a.⁵ Wexford's losses would have been significantly smaller if it: did not have policies of accepting every patient on a first come, first serve basis regardless of ability to pay and had not provided free and below cost care to indigent and elderly patients. App at 77a and 115a.⁶

⁴ With its open access policies, Wexford has been the largest primary healthcare provider in the Cadillac area, averaging between 40,000 and 44,000 patient visits per year. App at 8a and 92a.

⁵ During 1999, 2000, and 2001, Wexford lost \$575,000, \$731,000, and \$673,000, respectively. App at 77a.

⁶ **Unlike Wexford, for-profit providers can at any time provide no or limited care to poor and elderly patients**, including those who participate in Medicaid and

Wexford's charitable policies have lessened the burdens of government. For example, if Wexford also had imposed restrictions on the indigent and elderly Medicaid and Medicare patients, the State's healthcare costs would have increased because some patients would have been treated at the local emergency room at a significantly higher cost and others would have had more expensive treatment because their treatment would have been delayed. App at 71a-72a, 77a-78a, 90a-91a, 114a-117a.⁷ The testimony on these points is significant:

Q In your experience, Mr. Zdrodowski, what happens to Medicaid, Medicare patients if nobody in town will see them?

A One, they present to the emergency room as their source of healthcare or as is the case with OB care right now in the state or in our county they may be transported to a different location to receive that care. So right now in Wexford County there's a shortage of OB care. Some of those Medicaid patients are being transported to Ludington to receive their prenatal and delivery services.

Medicare. Because Medicare and Medicaid patients' cost of care exceeds government reimbursements, almost all other healthcare providers in the subject community restrict their participation in these programs either by refusing to serve Medicare or Medicaid patients or by limiting the number of these patients or the dollar amount of services provided. App at 70a, 73a-76a, 81a, 100a-101a, 106a-108a, 115a-117a, 186a-191a. During the subject tax days of December 31, 1999 and 2000, with the exception of the Cadillac Hospital, no other Cadillac healthcare provider had similar open access policies for both adults and children. *Id.* and 114a. While Dr. Betts Barbus (a Cadillac pediatrician) testified that her practice had forty percent Medicaid patients, she confirmed the access problems for needy patients and noted that a free clinic was established to try to provide yet additional care for those patients. App at 186a-191a. However, the free clinic (which opened in February of 2002), has been open only one evening a week and is not designed to provide continuous care to a patient. App at 110a. Thus, even with Wexford's open access policies healthcare access problems for the less fortunate have continued.

⁷ Furthermore, Medicaid patients who cannot receive treatment in their community also could end up being transported, at State expense, for treatment in other communities, as has happened with Wexford County obstetrical care, which is a service Wexford has not provided. App at 71a-72a, 97a, 114a-115a.

* * *

Q Does it cost more for the government – for these patients to either go to the emergency room or to go to these out-of-town providers?

A Yes, definitely. If they go to the emergency room, that's probably the highest cost place of service for noncritical, nonacute conditions. And transporting them to other locations in the state adds the cost of the transportation.

* * *

Q And how does Wexford Medical Group's willingness to unconditionally accept Medicaid and Medicare patients impact the government?

A It lessens the burden of the government and does it in a couple of ways. First is it gives access to the people in the community in the Medicare and Medicaid programs who have the different illnesses that I talked about before[;] it allows them access to a healthcare provider at a time when those conditions or diseases are not in a full-blown or exacerbated state where they can receive care and really focus on the preventative side of care preventing higher cost treatment of symptoms later on. It also keeps those people out of the emergency room which is a high cost source of care for them.

Q And in all about how much money has Wexford Medical Group lost since it first started?

A Approximately \$2 million.

Q Can you tell us with these losses how Wexford Group manages to stay open?

A We're only able to stay open because our parents continue to fund the organization.

* * *

Q And how does Wexford Medical Group's efforts lessen the government's burden?

A Overall the services that we provide make sure that care is given in the lowest cost, most effective environment. If the care wasn't received from us, there's opportunity that that care would be provided by the emergency room or specialists further down the road, an environment that's much more expensive than the primary care setting.

Q And can you tell me why Medical – Wexford Medical Group continues to operate even though it has significant financial losses?

A We're an organization that is a tool that supports the charitable missions of our two parent organizations and they continue to provide funding for us to make healthcare accessible in the community to make sure that people have an access point. So without their charitable contribution to our organization we wouldn't exist.

App at 71a-72a, 77a-78a, and 90a-91a. [emphasis added].

Wexford could have significantly reduced its losses by not unconditionally accepting Medicare and Medicaid patients. App at 77a and 115a-116a. Trinity and Munson, however, have enabled Wexford to continue providing below cost healthcare and incurring these significant losses because doing so is consistent with their charitable missions. App at 7a-9a.⁸

IV. WEXFORD'S PUBLIC HEALTH SERVICES.

Wexford's services "include preventative medicine, health education and communicable disease control." App at 9a. Wexford treats a variety of medical

⁸ The testimony showed that Wexford had a goal of operating in the black in the future. App at 118a. **However, if Wexford ever ceased losing money the surplus would have been "plowed back into care" and would not have inured to the benefit of any individual.** App at 119a [emphasis added]. As noted above, Wexford's Articles of Incorporation and Bylaws would not have permitted private inurement. The record in its totality confirms that Wexford had the same charitable mission as its charitable parents, as the Tribunal found. App at 7a-9a, 50a, 61a-62a, 100a-101a, 105a-108a, 115a-117a, 125a-127a, and 133a-134a.

conditions ranging from acute and contagious conditions like hepatitis, meningitis, HIV, AIDS, and tuberculosis, to other severe maladies such as diabetes, obesity, congestive heart failure, and chronic obstructive pulmonary disease, to non-acute illnesses such as earaches, sore throats, and colds. App at 54a. Wexford also provides numerous educational health services to the community, many of which are not offered by any other local healthcare group.⁹

V. WEXFORD'S PROPERTY TAXATION AND EXEMPTION APPEAL.

For tax year 2000, Wexford's real and personal property had assessed and taxable values of \$802,000 and \$153,200, respectively. App at 5a. Following Wexford's unsuccessful Board of Review protest, on June 15, 2000, Wexford timely filed its Tax Tribunal petition appealing the subject taxation. App at 1a and 27a. Wexford claimed that its real property, **except for the 13% it leased to a for-profit entity**, and its personal property were exempt under the GPTA's charitable institution and public health exemptions, MCL 211.7o, 211.9(a), and/or 211.7r. App at 8a and 48a. On August 20, 2001, the Tax Tribunal issued an Order granting Wexford's motion to add the appeal for tax year 2001.¹⁰

On May 20, 2002, Richard A. Southern, the Tax Tribunal's appraiser member, presided at the Tax Tribunal's evidentiary hearing held in Lansing.¹¹ While the

⁹ Wexford's services that are not offered by any other local group include: bloodborne pathogen classes—which teach individuals how to deal with injuries when blood is present such that no disease is spread; medic defibrillator training; medic first aid education; osteoporosis education classes; carbon monoxide testing; blood glucose screening; prostate cancer screening; respiratory screenings; and a pneumovax clinic (which provides vaccination against pneumonia). App at 81a-88a.

¹⁰ For tax year 2001, Wexford's real and personal property had assessed and taxable values of \$858,100 and \$175,100, respectively. App at 5a.

¹¹ At the hearing the witnesses were Mr. Michael Zdrodowski, Wexford's Director

Tribunal's July 17, 2003 Opinion and Judgment rejected Wexford's exemption claims, it contained the following findings:

5. That as nonprofit corporations and tax-exempt public charities, Munson Healthcare and Trinity Health Care [Wexford's parents] have set forth missions that include providing access to healthcare services in underserved areas of Northern Michigan. In operating in furtherance of this mission both organizations have donated significant amounts of money in charity health care services.

* * *

10. [Wexford] operates in furtherance of the mission of its parent corporations, Munson Healthcare and Trinity Health Care. Because of this [Wexford] extends charity care and indigent services and has an open-acceptance policy for Medicare and Medicaid patients.

11. [F]ifty percent of [Wexford's] patients participate in either Medicare or Medicaid programs.

* * *

13. [Wexford] operates a charity care program that provides medical care to patients who qualify for and avail themselves of the program.

* * *

16. [Wexford] operates at a loss, with its parent corporations subsidizing the medical care provided at its facilities.

App at 7a-9a.

Wexford filed its claim of appeal in the Court of Appeals on August 6, 2003. On September 15, 2003, Wexford filed a motion to consolidate this case with *McLaren Regional Medical Center v Owosso*, Court of Appeals Case No. 244386 (hereinafter the "McLaren case"). On October 1, 2003, the Court of Appeals issued an Order

of Clinical Operations and Mr. John MacLeod, the President and Chief Executive Officer of the Mercy Hospital of Cadillac. App at 12a and 20a. The parties stipulated to the admissibility of the deposition testimony of the City of Cadillac's witness, Dr. Susan Betts-Barbus, a Cadillac pediatrician. App at 22a and 36a. The morning of the hearing the parties filed a stipulation agreeing to the admissibility of many of the proposed exhibits. App at 9a-12a and 43a-45a.

consolidating the two cases.¹² On August 24, 2004, the Michigan Court of Appeals affirmed the Tax Tribunal's decision. App at 38a-41a.

On May 12, 2005 this Court granted Wexford's Application for Leave to Appeal. The Order directed the parties to include in their briefs not only whether Wexford had established its entitlement to exemption under MCL 211.7o, 211.7r and 211.9(a), but also "whether the Tax Tribunal or the judiciary may impose a threshold level of charitable care or public health services when the Legislature has not done so."

ARGUMENT

I. STANDARD OF REVIEW.

The standard of review **for all issues** in this case derives from Const 1963, art 6, § 28.¹³ The Court of Appeals Opinion, App at 39a, correctly states:

¹² Along with its brief on appeal, Wexford filed a motion to add to the record the October 23, 2003 Affidavit of Michael Zdrodowski, Wexford's director of operations. The affidavit reported the most recent and increased dollar amounts for Wexford's free charity care. App at 46a. On November 13, 2003, the Court of Appeals remanded the case to the Tribunal for consideration of the Zdrodowski Affidavit. On January 13, 2004, the Tribunal entered an order ruling that the Zdrodowski Affidavit was not relevant to the subject tax years and "as such, Petitioner has submitted no new evidence to otherwise establish that the property should be exempt...." App at 42a.

¹³ Article VI § 28 states as follows:

All final decisions, findings, rulings and orders of any administrative officer or agency existing under the constitution or by law, which are judicial or quasi-judicial and affect private rights or licenses, shall be subject to direct review by the courts as provided by law. This review shall include, as a minimum, the determination whether such final decisions, findings, rulings and orders are authorized by law; and, in cases in which a hearing is required, whether the same are supported by competent, material and substantial evidence on the whole record. Findings of fact in workmen's compensation proceedings shall be conclusive in the absence of fraud unless otherwise provided by law.

In the absence of fraud, error of law or the adoption of wrong principles, no appeal may be taken to any court from any final agency provided for the administration of property tax laws from any decision relating to valuation or allocation.

Judicial review of a determination by the Tax Tribunal is limited to determining whether the tribunal made an error of law or applied a wrong [legal] principle....The factual findings of the tribunal are final, provided that they are supported by competent, material, and substantial evidence on the whole record.¹⁴

II. THIS COURT SHOULD FIND WEXFORD'S PROPERTY EXEMPT UNDER THE CHARITABLE INSTITUTION EXEMPTIONS.

A. Introduction And Summary.

Healthcare is indispensable. When needed, nothing is more important. For decades innumerable Michigan nonprofit healthcare facilities have had a special place in our society and been property tax-exempt under the GPTA charitable institution exemptions and this Court's decisions such as *Michigan Sanitarium & Benevolent Ass'n v Battle Creek*, 138 Mich 676; 101 NW 855 (1904), *Auditor General v RB Smith Memorial Hospital Ass'n*, 293 Mich 36; 291 NW 213 (1940), *Retirement Homes of the Detroit Annual Conference of the United Methodist Church, Inc v Sylvan Twp*, 416 Mich 340; 330 NW2d 682 (1980), as well as decisions such as *Huron Residential Services For Youth, Inc v Pittsfield Twp*, 152 Mich App 54; 393 NW2d 568 (1986).

Yet, as described in Wexford's Application for Leave to Appeal at 17, n 13, the Application filed in the McLaren case (which this Court is now holding in abeyance) and the amicus curiae briefs supporting Wexford's exemption claims, there are numerous pending cases involving the property taxation of nonprofit healthcare facilities. **Given the strength of Wexford's exemption claims, virtually every Michigan nonprofit, non-hospital healthcare facility will become taxable if this Court denies Wexford**

¹⁴ The Court of Appeals also noted that in general it will "defer to the Tax Tribunal's interpretation of a statute that it is delegated to administer." App at 39a. Yet, here the opinion of the Tribunal's appraiser member should not have been given any deference because of its egregious errors of law, which are detailed below.

exemption. This is the wrong result when the nonprofit healthcare sector needs every dollar, not to pay taxes, but to serve our society's most vulnerable who cannot afford healthcare. This case presents the following critical issues:

- In accordance with the GPTA's clear statutory language, and this Court's *Auditor General* and *Retirement Homes* decisions, should this Court hold Wexford's Cadillac healthcare facility property tax-exempt, thereby preserving exemption for the many similar nonprofit healthcare facilities that have been considered exempt since their inception?
- Or, must property taxes now be assessed and paid notwithstanding that these important healthcare facilities have open access and charity care policies such as Wexford's, and even though the Legislature has not imposed a threshold level requirement, a government funding prohibition, or otherwise changed the meaning of charitable from that existing under *Auditor General* and *Retirement Homes*?

Incredibly, the decisions below not only violate the GPTA's clear statutory language, they also completely ignore this Court's *Auditor General* and *Retirement Homes* decisions, which are dispositive of this matter. GPTA sections 7o and 9(a) do not contain the prohibitions and restrictions the decisions below read into them. **Wexford has far exceeded the requirement of being charitable by serving everyone on a first come, first serve basis with charity care for the indigent and below cost care for other needy members of the public.**

Furthermore, this Court's *Auditor General* decision found a hospital to be charitable and property tax exempt because the hospital provided charity care to the indigent and below cost care to others who were needy, even though the hospital had surpluses in some years. Wexford is exempt under this Court's *Auditor General* decision. This Court's *Retirement Homes* decision also exempts Wexford both because

Wexford's free charity care to the indigent, and unrestricted and significant below cost care to poor and elderly patients, including Medicaid and Medicare patients, each constitutes a gift to an indefinite number of persons and because Wexford lessens government burdens.

Notwithstanding the controlling authorities requiring Wexford's exemption, the decisions below held that Wexford was not charitable because: (1) it did not provide sufficient free care as required by the Court of Appeals decision in *ProMed Healthcare v Kalamazoo*, 249 Mich App 490, 500; 644 NW2d 47 (2002); (2) the below cost care provided poor and elderly Medicaid and Medicare patients constituted the exchange of services for payment and therefore did not constitute charity; and (3) Wexford's aim was to be profitable. App at 39a-40a. For the reasons described below, this Court should repudiate these holdings under the record in this case, the GPTA's clear statutory language and this Court's *Auditor General* and *Retirement Homes* decisions.

B. Wexford Is Exempt Under The Clear Language Of GPTA Sections 7o(1) And 9(a).

GPTA section 7o(1), MCL 211.7o(1), states:

Real or personal property owned and occupied by a nonprofit charitable institution while occupied by that nonprofit charitable institution solely for the purposes for which it was incorporated is exempt from the collection of taxes under this act.¹⁵

¹⁵ Public Act 309 of 2000 made the above quoted section 7o(1) language effective in October of 2000 so it applies to the 2001 tax year at issue. In amending section 7o(1), Public Act 309 merely replaced the first word of the statute "Property" with "Real or personal property." Thus, for the subject 2000 tax year the statute stated: "**Property** owned and occupied by a nonprofit charitable institution while occupied by that nonprofit charitable institution solely for the purposes for which it was incorporated is exempt from the collection of taxes under this act." [Emphasis added]. Public Act 309's replacing "Property" with "Real or personal property" is of no consequence here. For tax year 2000, "Property" includes both real and personal property. For tax year

Similarly, GPTA section 9(a), MCL 211.9(a), exempts from taxation “[t]he personal property of charitable, educational, and scientific institutions.” The only issue with respect to each of these charitable institution exemptions is whether Wexford has made the requisite showing of being charitable.¹⁶

While Wexford bears the burden of proof and exemption statutes are strictly construed, the rule that exemptions are strictly construed does not permit a strained construction adverse to the Legislature’s intent. *Michigan United Conservation Clubs v Lansing Twp*, 423 Mich 661, 664; 378 NW2d 737 (1985). In fact, the pre-eminent rule of statutory construction that governs this case is that if statutory language is clear and unambiguous, “the court must follow the clear wording of the statute.” *American Alternative Ins Co v Farmers Ins Exchange*, 470 Mich 28, 30; 679 NW2d 306 (2004), *Cruz v State Farm Mut Auto Ins Co*, 466 Mich 588, 594; 648 NW2d 591 (2002); and *Lansing v Lansing Twp*, 356 Mich 641, 649; 97 NW2d 804 (1959).

The clear statutory language of GPTA sections 7o(1) and 9(a) simply requires that the nonprofit institution be charitable. The Legislature easily could have established some minimum or sufficient charity threshold. Such a threshold could have

2001, Public Act 309 confirmed that section 7o(1) applies to both real and personal property. In this case no one has ever suggested that this clarification of legislative intent should have any bearing on the property’s exemption in either of the subject years.

¹⁶ Appellate decisions have consistently enforced the clear language of these two statutes. Section 7o decisions have required that: the real estate be owned and occupied by the exemption claimant; the exemption claimant be charitable; and the claimant occupy the buildings and other property solely for the purposes for which the claimant was incorporated. *Gull Lake Bible Conference Ass’n v Ross Twp*, 351 Mich 269 273; 88 NW2d 264 (1958); *Michigan Baptist Homes v Ann Arbor*, 396 Mich 660, 670; 242 NW2d 749 (1976); *OCLC Online Computer Library Center, Inc v Battle Creek*, 224 Mich App 608, 612; 569 NW2d 676 (1997). Similarly, section 9(a) has required the claimant to demonstrate it is a charitable institution and that it owns the personal

been measured in absolute dollars, percentage of revenue or some other standard. In creating such a threshold the Legislature might have addressed a myriad of issues. However, in GPTA sections 7o(1) and 9(a) the Legislature has not in any way done this.¹⁷

Nor has the Legislature in any way precluded exemption for a charity that accepted government reimbursement, whether the reimbursement is **part** of the cost of healthcare, the entire cost of a youth home, or something else. While those whose mission is to provide healthcare believe charity includes costs incurred but not paid under Medicaid and Medicare, App at 98a-99a, the Legislature easily could make the law otherwise. The Legislature could amend the statute so that below cost services provided to the indigent and elderly would not constitute charity if government funds were involved in any way. However, the clear language of the statute does not contain, and therefore the Legislature has not imposed, any such restrictions. The decisions below erred by imposing requirements the Legislature never enacted.¹⁸

property. *OCLC Online Computer Library Center, supra*, at 614.

¹⁷ If this Court reverses, as it should, and **if** the Legislature ever considers changing the definition of charitable, there will be many issues for the Legislature to consider including: (1) how to take into account the indigent who never pay for care provided, but do not identify themselves as charity care, perhaps because of a perceived stigma. App at 68a-69a and 95a; (2) whether there should be reduced exemption standards for facilities that provide vital healthcare; and (3) whether continuous surpluses should jeopardize exemption. It is precisely these types of policy matters that the Legislature is best equipped and supposed to address under our system of government.

¹⁸ Why the Legislature has previously not limited the charitable institution exemptions, as the decisions below would, is immaterial to this Court's decision in this case. All that matters is that the Legislature has not enacted, and the clear statutory language does not contain, the requirements and limitations of the decisions below. Yet, part of what the decisions below overlook is that the Legislature might well have decided **that the wisest public policy is to support and exempt charities receiving government reimbursement because charities can provide services more**

As described in the Statement of Facts, at 2-9, there is no dispute that Wexford offers and provides healthcare to the public on a first come first serve basis, with charity care for the poor and unlimited acceptance of poor and elderly Medicaid and Medicare patients who need below cost care because government reimbursements do not cover the cost of their care.¹⁹ Nor is there any dispute as to the amount of free charity care or the almost \$2 million that Wexford lost because of the below cost care Wexford provided indigent and elderly Medicaid and Medicare patients during 1999 through 2001 alone. App at 9a. 76a-77a, 115a. Furthermore, the following Tribunal findings of fact, which satisfy the clear statutory requirement of being a charitable organization, have never been questioned:

5. That as nonprofit corporations and tax-exempt public charities, Munson Healthcare and Trinity Health Care have set forth missions that include providing access to healthcare services in underserved areas of Northern Michigan. In operating in furtherance of this mission both organizations have donated significant amounts of money in charity health care services.

* * *

10. [Wexford] operates in furtherance of the mission of its parent corporations, Munson Healthcare and Trinity Health Care. Because of this Wexford extends charity care and indigent services and has an open-acceptance policy for Medicare and Medicaid patients.

11. [F]ifty percent of [Wexford's] patients participate in either Medicare or Medicaid programs.

* * *

efficiently than government. Almost twenty years ago when the Court of Appeals held a nonprofit youth home charitable and exempt, even though the home essentially was government funded, the Court of Appeals noted the evidence “that the petitioner’s programs cost the state less than if the state itself provided programs.” *Huron Residential Services, supra*, 152 Mich App at 63 [emphasis added].

¹⁹ The only reason Wexford has refused to provide anyone healthcare is due to a person’s improper behavior such as being violent, abusive or dishonest. App at 69a. The City of Cadillac has never in any way suggested, nor do the opinions below in any way opine, that this should preclude exemption.

13. [Wexford] operates a charity care program that provides medical care to patients who qualify for and avail themselves of the program.

* * *

16. [Wexford] operates at a loss, with its parent corporations subsidizing the medical care provided at its facilities.

App at 7a-9a.

Critically, the only other action Wexford could take to qualify for exemption under the decisions below, would be to refuse to accept any government reimbursement, and incur far greater, enormous losses. Yet, the Legislature has not required this. The word charitable by itself does not mandate this. “Charitable” has been proven by Wexford’s first come, first serve charity policies that provide a broad safety net of free and below cost care, especially considering that these policies taken together amounted to almost \$2 million in below cost care during 1999-2001 alone.²⁰

The Court of Appeals and Tribunal had comparable views of Wexford’s below cost care involving government reimbursement. The Court of Appeals opinion characterized this as a fee for services and an acceptance of below cost payments, but not charity. App at 39a. The Tribunal said that the below cost care did not qualify as charitable because Wexford and its parents voluntarily chose to accept losses resulting

²⁰ Surely healthcare is even more important, and more deserving of exemption, than a nature preserve, an aviation history museum or a historic home available to the public. Yet these other facilities all were held charitable and exempted in *Kalamazoo Nature Center v Cooper Twp*, 104 Mich App 657; 305 NW2d 283 (1981), *Kalamazoo Aviation History Museum v Kalamazoo*, 131 Mich App 709; 346 NW2d 862 (1984) and *Edsel & Eleanor Ford House v Village of Grosse Pointe Shores*, 134 Mich App 448; 350 NW2d 894 (1984). **While the nature preserve, museum and Ford House properties were used to provide charity and correctly held exempt, what they offered the public and what they did to lessen a burden of government pale in comparison to Wexford’s providing vital healthcare, regardless of ability to pay, to the general public in a rural health professional shortage area.**

from this healthcare provided to the indigent and elderly. *Id.* at 31a.

However, the Tribunal's reasoning was egregiously flawed because a charity **always** chooses to accept losses that result from providing a gift to an indefinite number of persons or lessening government burdens. **That Wexford and its parents volunteered for their charitable healthcare mission in no way undermines Wexford's charitable exemption claim.** The rationale of the Court of Appeals, which simply refused to accept this evidence of charity, was as disingenuous as the Tribunal's.

Wexford proved it is charitable under the GPTA's clear language. The restrictions and limitations the decisions below read into the word "charitable," are not in the GPTA. Accordingly, this Court should reverse and exempt the subject property.

C. Wexford Is Exempt Under This Court's Prior Rulings.

Consistent with this Court's decision in *Michigan Sanitarium & Benevolent Ass'n v Battle Creek*, 138 Mich 676; 101 NW 855 (1904), which held charitable and exempt a hospital that charged fees, in *Auditor General* this Court also held a hospital **charitable**, and affirmed property tax-exemption. Reciting the facts, 293 Mich at 38, this Court said:

Although organized as a nonprofit corporation, defendant charges all patients for its services, but does not collect from the indigent. **The testimony shows that there was an excess of revenue over costs during certain periods** and a deficit during others, which was met in part by donations. Patients who were financially able paid the full rate charged. County patients and afflicted children were treated at less than cost, and no poor person has ever been refused admittance or treatment because of his inability to pay. [Emphasis added].

Wexford's property is exempt under *Auditor General* and Wexford's facts described above (including the just quoted Tribunal findings). As in *Auditor General*, Wexford has first come, first serve, open access policies that provide charity for the poor and below cost care to other needy patients. As described in the Statement of

Facts, pp 1-8, unlike for-profit providers, Wexford cannot and does not restrict those needing free or below cost care. *Auditor General* requires that this Court reverse and hold Wexford exempt.²¹

Similarly, Wexford should prevail under *Retirement Homes*. There, this Court defined charity as follows:

[A] gift, to be applied consistently with existing laws, for the benefit of an indefinite number of persons, either by bringing their minds or hearts under the influence of education or religion, by relieving their bodies from disease, suffering or constraint, by assisting them to establish themselves for life, or by erecting or maintaining public buildings or works or otherwise lessening the burdens of government. [Emphasis added].

Retirement Homes, supra, 416 Mich at 348-349.²² Wexford qualifies as charitable under this definition because it provides a “gift...for the benefit of an indefinite number

²¹ It would be illogical to distinguish *Auditor General* from Wexford because Wexford’s parents obtained charitable donations and enabled Wexford to provide free and below cost care to the needy. Nor can *Auditor General* be distinguished based on the Court of Appeals finding that Wexford aimed to be profitable. While the Court of Appeals did not identify the basis for this conclusion, the testimony included that Wexford had a goal of becoming profitable within its first three to five years. App at 118a. However, as described in the Statement of Facts, n 8, **if Wexford ever ceased losing money the surplus would have been “plowed back into care” and would not have inured to the benefit of any individual.** App at 119a [emphasis added]. As noted above, Wexford’s Articles of Incorporation and Bylaws would not have permitted private inurement. As the record confirms, and as the Tribunal found, Wexford had the same charitable mission as its charitable parents. App at 7a-9a, 50a, 61a-62a, 100a-101a, 105a-108a, 115a-117a, 125a-127a, and 133a-134a.. **Finally, as this Court’s decision in *Auditor General* confirms, charities are exempt even if, as in *Auditor General*, they have surpluses in some years. Critically, any surplus must be used to further the charity’s mission and not for private inurement.**

²² This definition of charity has been frequently used in Michigan cases. Just a few instances are: *Michigan United Conservation Clubs v Lansing Twp*, 423 Mich at 671; *Chauncey and Marion Deering McCormick Foundation v Wawatam Twp*, 196 Mich App 179, 183 n 1; 492 NW2d 751 (1992); *Kalamazoo Aviation History Museum v Kalamazoo*, 131 Mich App 709, 714-715; 346 NW2d 862 (1984); *Edsel & Eleanor Ford House v Village of Grosse Pointe Shores*, 134 Mich App 448, 457; 350 NW2d 894

of persons...by relieving their bodies from disease, suffering or constraint....” *Id.* This Court easily should find that Wexford provides the gift required of a charity, given the record described in the Statement of Facts, pp 2-9, the importance of healthcare, especially in a designated health professional shortage area, and that Wexford provides care on a first come, first serve basis with charity care for the poor and below cost care for other needy patients including poor and elderly Medicare and Medicaid patients.²³

Additionally and independently, Wexford is charitable under this Court’s *Retirement Homes* decision because Wexford lessens the burdens of government by assisting the State and federal government in achieving their healthcare obligations and objectives for the poor and the elderly. The Michigan Constitution states:

The public health and general welfare of the people of the state are hereby declared to be matters of primary public concern. The legislature shall pass suitable laws for the protection and promotion of the public health.

Const 1963, art 4, § 51. As described in the Statement of Facts, pp 2-9, Wexford’s first come, first serve open care policies provide free care for the poor and below cost care for poor and elderly patients including those participating in Medicaid and Medicare.

If Wexford were not charitable, it could restrict treatment of the areas’ Medicaid and Medicare patients, which would cause patients to be treated at a higher cost to the

(1984); and *Huron Residential Services, supra*, 152 Mich App at 61-62.

²³ In *Auditor General* this Court granted exemption notwithstanding the fees charged those who were able to pay. Similarly, in *Retirement Homes, supra*, 416 Mich at 350 n 15, this Court also stated that “a non-profit corporation will not be disqualified for a charitable exemption because it charges those who can afford to pay for its services as long as charges approximate costs of services.” Thus, under both *Retirement Homes* and *Auditor General*, exemption is not jeopardized because fees, that are at or below cost, are collected. As already described above, Wexford proved that it lost almost \$2 million in about two and a half years and Wexford’s charitable parents enabled Wexford to provide this vitally important healthcare.

State: patients either would be treated at the local emergency room, the highest cost provider, or they would be treated at a later time when a more serious condition would be more costly to cure. Statement of Facts, pp 6-8. And, where care cannot be found in the area, poor patients are transported at State expense. *Id.* Instead, as described above, pp 2-9, Wexford's charitable open access policies provide free and below cost care, **attracting** the one out of every two patients who needs free or below cost care, which causes significant losses such as the almost \$2 million lost in about two and a half years. Wexford's lessening of government burdens warrants exemption.²⁴

D. The Errors Of Law In The Decisions Below Require Reversal.

By now it should be abundantly clear that this Court should reverse. The decisions below violate the clear statutory language of GPTA sections 7o(1) and 9(a) and contravene this Court's *Auditor General* and *Retirement Homes* decisions, both of which were completely ignored. As just described above: (1) the decisions below contravene the GPTA's clear statutory language by imposing a charity threshold and government reimbursement prohibition the Legislature never enacted; and (2) Wexford is exempt under both *Auditor General* and *Retirement Homes*.

Furthermore, the decisions below erred as a matter of law in not distinguishing the Court of Appeals decision in *ProMed Healthcare, supra*. ProMed had merely stipulated that it had a charity care policy to "provide an appropriate level of charity care...." *ProMed Healthcare, supra*, 249 Mich App at 500. However, "ProMed failed to

²⁴ Wexford's **public** vaccination, screening and education programs described above, also lessen governmental burdens. **Unlike Wexford, for-profit providers can restrict access at any time, limiting or refusing to see needy patients, including Medicaid and Medicare patients.** As the record established, Wexford provides an important access point for healthcare in a health professional shortage area where for-profit providers have restricted access. Statement of Facts, n 6 and pp, 2-9.

present to the Tax Tribunal any evidence that it complied with this internal charity policy.” *Id.*

In contrast, here it was undisputed and Wexford proved that it followed its specific charity care policies (as opposed to an ambiguous “appropriate charity” policy) and that Wexford expanded the initial charity policy to provide assistance to those whose incomes exceeded the federal poverty level, but were below double that level. App at 67a. Wexford also showed it provided almost \$2 million in below cost care for poor and elderly patients, including those participating in Medicaid and Medicare. Furthermore, as described above, the Tribunal’s favorable findings of facts confirmed that Wexford operates consistent with the mission of its charitable parents.²⁵ And, it was undisputed and Wexford proved it lessened government burdens.

Wexford recognizes that in *ProMed* the Court of Appeals also denied exemption because “ProMed failed to present evidence that its provision of charitable medical care constituted anything more than an incidental part of its operations.” *ProMed Healthcare, supra*, 249 Mich App at 500. The Court of Appeals elaborated on its reason for reading this requirement into the statute:

In fact, it appears from the record that ProMed operates a fairly typical family medical practice, where patients are expected to pay for medical care received, either through private or governmental insurance programs. Although ProMed claims that it provides some medical care to indigent

²⁵ For the Court’s convenience, and at the risk of being redundant, those Tribunal fact findings were that: Wexford’s parents’ missions “include(d) providing access to healthcare services in underserved areas of Northern Michigan;” “(i)n operating in furtherance of this mission, both organizations have donated significant amounts of money in charity health care services;” Wexford “operated in furtherance of the mission of its parent(s),” and because of this Wexford “extends charity care and indigent services,” and has open access policies, and “operates at a loss, with its parent corporations subsidizing the medical care provided at its facilities.” App at 7a-9a.

patients without charge, ProMed failed to provide any documentation regarding such services. **If we were to accept ProMed's argument and reverse the Tax Tribunal's ruling in the present case, we would in effect be granting tax exempt status to every doctor's office in the state, as well as every organization offering health-related services, as long as those organizations are structured as nonprofit corporations and maintain policies of offering some 'appropriate' level of charity medical care to indigent persons.** We cannot conclude that the legislature intended MCL 211.7o and 211.7r to create such a result.

Id. at 500-501. This of course is the same egregiously flawed standard and reasoning the decisions below used to reject Wexford's exemption claim.

This rationale, however, is fatally flawed for two reasons:

1. **It is not based on the clear language of the statute, but rather the fear of what would happen if the clear statutory language is enforced and entities like Wexford are exempted; and**
2. It is based on the unfounded fear that exempting Wexford would provoke an exemption stampede that includes every family medical practice, even though: (a) this will not happen because of state and federal restrictions on such charitable entities; **and (b) in fact this has not occurred even though facilities like Wexford have been exempt for decades.**²⁶

Charitable healthcare facilities like Wexford have been property tax-exempt throughout this State for decades without causing a herd of for-profit providers to convert to nonprofit status and seek property tax-exemption. This proves that the Court of Appeals concern was unwarranted. Those who seek private inurement and profit maximization have proven by their own inaction over decades that they are not willing to

²⁶ Also proving the stampede fears are baseless is that section 501(c)(3) exempt status provides federal income tax and state tax exemptions (under MCL 208.35(1)(c), MCL 211.54q(1)(b) and MCL 205.94(w)) that typically would be more valuable than property tax exemption, yet for-profit providers have chosen not to obtain such status.

accept the myriad of state and federal limitations and requirements of being charitable.

Illustratively, if a party has a transaction with a tax-exempt entity and receives consideration greater than the fair market value of what is given the exempt entity, section 4958 of the Internal Revenue Code provides for excise taxes of up to 225% of the difference. 26 USC 4958. Also, under section 501(c)(3) of the Internal Revenue Code an exempt entity is required to avoid payment of any dividends or more than fair market value compensation to its directors, officers and employees under the private inurement and private benefit doctrines. 26 USC 501(c)(3).

In addition, Michigan law imposes its own restrictions on exempt entities. Section 301 of the Michigan Nonprofit Corporation Act states that nothing in the Act shall be deemed to permit assets “held by a (nonprofit) corporation for charitable purposes to be used, conveyed or distributed for noncharitable purposes.” MCL 450.2301(5). Section 301 of the Nonprofit Corporation Act also precludes the payment of any dividends to individuals or for-profit corporations, even if they are shareholders of the corporation. MCL 450.2301(3).²⁷

Thus, operating as a charitable institution would require for-profit healthcare providers to not only face a new significant annual income restriction, it would preclude

²⁷ A Michigan nonprofit corporation cannot involve “pecuniary profit or gain for its directors, officers, shareholders, or members.” MCL 450.2108(3). A Michigan nonprofit corporation may pay dividends to its shareholders (or members for a non-stock corporation) only if the corporate purposes include providing a benefit to its shareholder (or member) corporation. MCL 450.2301(3)(c). However, given the statutory definition of “corporation” as including only nonprofit corporations, the provision precludes payment of dividends from a nonprofit corporation to any for-profit corporation. MCL 450.2106(1) and 450.2301(3)(c). Furthermore, an entity would not be able to obtain tax-exempt status if its articles stated that one of its purposes was to provide dividends or distributions to one or more for-profit owners. Michigan law also prevents abuse through dissolution or other subterfuges. MCL 450.2855 and MCL 14.251.

them from benefiting from the sale of assets (even after a long career with retirement in sight). **In its misguided social engineering, the Court of Appeals erred as a matter of law, rejecting exemption based not on the statute's clear language but on a fear that has no basis in reality.**

Finally, this Court should find that the decisions below also err as a matter of law by not following the sound reasoning of *Huron Residential Services, supra*. There, a residential treatment facility for troubled, neglected, and abused youths relied on the GPTA's charitable institution exemption. The treatment facility charged a fee based upon the cost of its services. *Huron Residential Services*, 152 Mich App at 62. More than ninety-nine percent of the home's operating funds came from per diem payments from the State. *Id.* **Reversing** the Tax Tribunal's denial of the charitable institution exemption, the Court of Appeals held:

First, we note that the youths clearly receive a gift. **From our review of *Retirement Homes, supra*, it appears that the proper focus is whether there is a gift for the benefit of the residents. Here it is the state, not the residents, that pays for the services rendered to the residents.**

Second, we note that petitioner does not charge more than the cost of its services—its charges are based on per diem rates established by the state on the basis of petitioner's costs in the prior 18 months. Consequently, in an inflationary period, petitioner's charges will generally be less than its current costs. **In *Retirement Homes*. . . the Supreme Court stated that 'a nonprofit corporation will not be disqualified for a charitable exemption because it charges those who can afford to pay for its services as long as the charges approximate the cost of the services.'** If petitioner could charge, at the per diem rate, people using its services and able to pay, we think it ought also to be able to pass on such charges to the state.

In *Retirement Homes*. . . the Supreme Court noted that, in three cases from sister jurisdictions, 'a tax exemption was granted, at least in part, because many of the residents were subsidized either by the home, by the government, or by both.' In the instant case, the residents were subsidized almost completely by the state because, if petitioner did not

provide the service, the state itself would have been required to care for the youths. That petitioner's service fulfills a government purpose should tend to qualify it as a charitable purpose rather than disqualify it . . . **Furthermore, the uncontradicted testimony at the Tax Tribunal hearing indicated that the petitioner's programs cost the state less than if the state itself provided programs.**

Id. at 62-63 [citations omitted] [emphasis added].

The decisions below are inconsistent with *Huron Residential Services*. As in that case, Wexford provides a gift and lessens the government's healthcare burden through the free and below cost care it provides the poor and elderly.²⁸ Furthermore, the decisions below are inconsistent with *Huron Residential Services*, because in that case the Court granted exemption even though the State essentially paid all costs of care, whereas here Wexford provided the free and almost \$2 million of below cost care that indigent and elderly patients received in about two and a half years!

Huron Residential Services was correctly decided. It is consistent with the GPTA's clear statutory language and this Court's decisions that for numerous decades have sheltered the State's nonprofit healthcare facilities from property taxation as long as those facilities followed open access, first come, first serve, and charity care policies such as Wexford's. Reversing the decisions below is necessary to maintain this long established law, and enforce the clear statutory language and the Legislature's intent.

²⁸ As described in the Statement of Facts, pp 2-9: (1) **if Wexford restricted treatment of the areas' Medicaid and Medicare patients, the government's healthcare costs would increase**; (2) instead Wexford has charitable open access policies that attract poor and elderly patients who need free or below cost care and Wexford accepts such patients without restriction even though as a result Wexford sustains financial losses in the millions of dollars; and (3) critically, **for-profit providers not only can adopt restrictive policies at any time**, most other Cadillac area providers refuse to serve Medicare or Medicaid patients or restrict the number of patients or the dollar amount of services provided.

This Court should hold that the decisions below contain errors of law, reverse the Court of Appeals decision, and grant Wexford the exemption requested.

II. THIS COURT SHOULD FIND WEXFORD'S PROPERTY EXEMPT UNDER THE PUBLIC HEALTH EXEMPTION

GPTA section 7r (the public health exemption), MCL 211.7r, provides in pertinent part:

The real estate with the buildings and other property located on the real estate on that acreage, owned and occupied by a nonprofit trust and used for hospital or public health purposes is exempt from taxation under this act.

The Tribunal confirmed Wexford's property ownership and nonprofit status, which were not disputed below. App at 7a and 49a. Thus, the only issue is whether Wexford used its property for public health purposes.²⁹

This Court has not previously addressed the scope of exemption under section 7r. As with section 7o, this Court should "follow the clear wording of the statute." *American Alternative Ins Co, supra*, 470 Mich at 30.

Wexford qualifies for exemption under the clear language of section 7r. In a rural area where public health services are in short supply, Wexford protects and promotes the public health in a variety of ways, **starting with its acceptance of everyone regardless of their ability to pay**. Wexford prevents diseases from spreading, both by preventing disease from arising through vaccinations and health promotion programs, diagnosing and remedying communicable diseases that would spread if untreated, and preventing chronic conditions from worsening. App at 9a. For example, Wexford treats

²⁹ Obviously, if Wexford is exempt under **either** the charitable institution exemptions or the public health exemption, this Court's decision should exempt the property at issue and reverse.

a variety of medical conditions ranging from acute and contagious conditions like hepatitis, meningitis, HIV, AIDS, and tuberculosis, to other severe maladies such as diabetes, obesity, congestive heart failure, and chronic obstructive pulmonary disease, to non-acute illnesses such as earaches, sore throats, and colds. App at 54a, 78a, and 89a-90a. Protecting the public health encompasses a broad array of actions which undeniably includes preventing, diagnosing and remedying contagious diseases, even if those diseases are not typically life threatening, and treating other ailments such as obesity.

Additionally, Wexford also provides a number of public health services to the community, many of which are not offered by other healthcare providers, including:

1. Medic First Aid education classes (no other area establishment provides these classes);

2. American Heart Association CPR classes (Cadillac hospital is the only other establishment providing these classes);

3. Bloodborne pathogen classes—which are classes to teach individuals how to deal with injuries when blood is present such that no disease is transmitted (no other area establishment provides these classes);

4. Osteoporosis education classes (no other area establishment provides these classes);

5. Pediatric educational lectures—which are lectures concerning issues such as caring for a newborn, recognizing diseases such as chicken pox, and education concerning attention deficit hyperactivity disorder (only one area establishment may provide similar lectures);

6. International travel health education classes—which are classes concerning the prevalent diseases in various geographic locations, how to prevent contracting the diseases, and the vaccinations which are available (no other area establishment provides these classes);

7. Medic defibrillator training (no other area establishment provides this training);

8. Sports physicals;
9. Carbon Monoxide testing (no other area establishment provides this service);
10. Blood glucose screening (no other area establishment provides this screening);
11. Prostate cancer screening (no other area establishment provides this screening);
12. Mammogram screenings (the Cadillac hospital is the only other area establishment providing such screenings);
13. Respiratory screenings (no other area establishment provides this screening);
14. Osteoporosis screening (the hospital is the only other area establishment providing such screenings);
15. Osteoporosis support group (no other area establishment provides this screening);
16. Indigent drug program—pharmaceutical companies make available certain drugs at no or low cost to indigent patients and Wexford assists eligible patients with the complex and onerous paperwork (only one other area establishment provides similar assistance);
17. Flu vaccine clinic (only one other area establishment provides this service); and
18. Pneumovax (vaccination against pneumonia) clinic (no other area establishment provides this service).

App at 82a-88a.

That Wexford does not discriminate in the health services and programs it provides the public is undisputed (and could not be reasonably contested given the facts already described). As a result of these programs, (i) communicable disease is controlled through treatment, (ii) chronic conditions are addressed, and (iii) community

members can maintain their health. App at 54a, 78a, and 82a-90a. The Tribunal so determined:

17. (Wexford) treats a variety of medical conditions. Its services include preventative medicine, health education, and communicable disease control.

18. (Wexford) provides health clinics and education classes, which are supplemental to the services it provides.

App at 9a.

Even if all Wexford did was to prevent (through vaccines and education) and treat communicable diseases, this alone would constitute use for public health. Wexford goes well beyond this in improving the public health. **Indeed, a public health crisis can begin because just one person failed to obtain a vaccination or prompt healthcare treatment.** Accordingly, based on the record, the Tribunal's findings and the clear language of the statute, this Court should find Wexford exempt under section 7r and reverse the decisions below.

Additionally, Wexford satisfies section 7r's public health requirement under the rationale and holding of *Rose Hill Center, Inc v Holly Twp*, 224 Mich App 28, 33; 568 NW2d 332 (1997). In *Rose Hill*, the Court found that the petitioner operated a facility for public health purposes where the petitioner provided services to mentally ill patients (including psychiatric evaluation and diagnosis); prescribed and dispensed medication; offered rehabilitation and reintegration programs; was staffed with healthcare professionals; was open to the public without regard to race, religion, or sex; and accepted patients covered by Medicare, Medicaid and private sources. *Id.* at 33-34. In its analysis, the Court of Appeals adopted The American Heritage Dictionary, Second College Edition, definition of public health:

[T]he art and science of protecting and improving community health by means of preventative medicine, health education, communicable disease control, and the application of the social and sanitary sciences.

Wexford should be exempt under *Rose Hill's* definition of public health. As just described above, Wexford protects and improves "community health by means of preventative medicine, health education, (and) communicable disease control." *Id.*

Additionally, Wexford satisfies section 7r under the holding of *Rose Hill*. As was true of the *Rose Hill* petitioner, Wexford provides healthcare services (including evaluation and diagnosis); prescribes and dispenses medication; is staffed with a variety of healthcare professionals; has open access policies; and treats patients regardless of ability to pay or source of payment. App at 8a-9a, 53a-54a, 67a, 70a and 88a-90a. Especially given the prevention and education health programs and treatment programs that Wexford provides in a health professional shortage area, this Court should confirm Wexford's exemption under *Rose Hill* and GPTA section 7r.

Finally, the decisions below err as a matter of law by disregarding the clear statutory language of section 7r. To the extent that the decisions below hold that Wexford does not provide enough public health services to be exempt, as with section 7o(1), this would impermissibly read into the statute a threshold requirement that the Legislature simply has not enacted. To the extent that the decisions below are based on the fear that granting Wexford exemption would create an exemption stampede, as stated above at 24, this constitutes error as a matter of law because it disregards the clear statutory language. Furthermore, as described above at 24-26, this fear is completely unfounded because exempting Wexford and similar healthcare providers

has not and will not cause significant numbers of for-profit providers to convert to nonprofit tax-exempt status and subject themselves to all the limitations that result.

CONCLUSION

In a misguided effort to prevent for-profit healthcare providers from availing themselves of the charitable institution and public health exemptions, the Court of Appeals has reached conclusions and a result that cannot be reconciled with the GPTA's clear statutory language and opinions of this Court issued over many decades, including *Michigan Sanitarium*, *Auditor General* and *Retirement Homes*. Wexford and the other charitable healthcare providers in this State want to continue to provide as much charity healthcare as possible, rather than use their scarce resources to pay property taxes. This Court should rule that the requirement of charitable in GPTA sections 7o(1) and 9(a) is satisfied where nonprofit healthcare providers offer care on a first come, first serve basis with free care for the poor. Wexford, of course, has far surpassed such a standard by providing free charity care, making significant below cost care available and lessening important healthcare burdens of government. This Court also should rule that Wexford has satisfied the public health requirement of GPTA section 7r. Accordingly, this Court should correct the errors of law below, reverse and grant Wexford the property tax exemption requested under GPTA sections 7o(1), 7r, and 9(a).

RELIEF REQUESTED

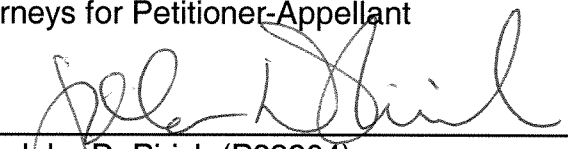
Petitioner-Appellant Wexford Medical Group respectfully requests that the Court issue an opinion and judgment that: REVERSES the Court of Appeals Opinion, grants Petitioner-Appellant Wexford Medical Group the property tax exemption requested under General Property Tax Act sections 7o(1), 9(a) and 7r and requires the correction

of the applicable tax rolls in accordance with this Court's order and judgment and the Tax Tribunal Act, MCL 205.731 *et seq.*, including Tribunal Act sections 37(4) (MCL 205.737(4)) and 55(1) (MCL 205.755(1)).

Respectfully submitted,

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